

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 120 and 120.3
Title 14, California Code of Regulations
Re: Spot Prawn Trawling

- I. Date of Initial Statement of Reasons: December 20, 2003
- II. Date of Pre-adoption Statement of Reasons: January 21, 2003
- III. Date of Final Statement of Reasons: March 3, 2003
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: December 20, 2002
Location: Sacramento, CA
 - (b) Discussion Hearing Date: February 6, 2003
Location: Sacramento, CA
 - (c) Adoption Hearing: Date: February 18, 2003
Location: Sacramento, CA
- V. Update:

Through an inadvertent error, Section number 120 was left out of the heading in the Initial Statement of Reasons and the Pre-Adoption Statement of Reasons. The description of the proposed change to Section 120, a prohibition on the incidental take of spot prawn during pink shrimp trawl operations, was provided in full detail in the Initial Statement of Reasons and the proposed regulatory changes were shown in strike-out/underline format.

After testimony at its February 18, 2003 telephonic meeting, the Commission unanimously adopted Option (3) a prohibition on the use of trawl nets to take spot prawn. The regulatory language also included a prohibition on the take of spot prawn when trawling for pink shrimp.

A minor grammatical change was made to the regulatory text of Section 120.

The proposed addition of Section 120.45, Title 14, CCR, was not adopted by the Commission.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

Mr. Paul Nielsen
Electronic letter dated January 18, 2003

Mr. Nielsen supports further limitations or totally eliminating the take of spot prawns by trawl.

Department's Response: The Department's proposal includes a range of options to further restrict the spot prawn trawl fishery and an option that completely prohibits the use of trawl gear.

Mr. David Couch, commercial spot prawn trapper
Letter dated December 29, 2002

Mr. Couch was a spot prawn trapper until he was eliminated from the fishery when the limited entry program was initiated. He requested that the Commission reconsider the qualifications for a Tier 2 spot prawn trap permit.

Department's Response: The Tier 2 spot prawn trap permit qualifications are not the subject of this rulemaking package.

Tom Raftican, President United Anglers of Southern California
Letter dated December 19, 2002

Mr. Raftican and his organization believe that the issue of bycatch has been overlooked in the management of groundfish. Department observer data has identified the spot prawn trawl fishery as having high bycatch levels that include overfished species. It has been demonstrated that spot prawns can be harvested economically in traps with minimal bycatch. The state of Washington has phased out spot prawn trawling, and Oregon is considering the same action.

Mr. Raftican states that landing data are not considered a reliable source of information by management authorities.

Mr. Raftican states that the Commission heard testimony from trawl fishermen that they would land bocaccio if they had a market for them. Also, that some processors are charging fishermen to unload and dispose of their bocaccio. Consequently, spot prawn trawlers dispose of their bocaccio bycatch at sea.

Mr. Raftican and his organization disagree with the trawl proponent's argument that the observer data are flawed because all bycatch was not weighed. They also feel that the data makes it abundantly clear that traps are a better alternative for minimizing bycatch when harvesting spot prawn.

Mr. Raftican points out that the Pacific Fishery Management Council (Council) allowed fishing activity in groundfish areas based on the assumption that spot prawn trawling would no longer be allowed or would be restricted to a minimum depth of 150 fathoms. Since the observer data indicate that there is no significant spot prawn trawl fishery operating outside of 150 fathoms, Mr. Raftican recommends that the Fish and Game Commission prohibit spot prawn trawling.

Department Response: The Department's proposal includes Option (3), a prohibition on the use of trawl nets to take spot prawn. The Department agrees that traps minimize bycatch and that the Council did assume that there would be no bycatch from the spot prawn trawl fishery in 2003. The Department does not consider landing data unreliable. However, it only reflects what is landed, not what was caught and discarded.

The Commission received 6 virtually identical electronic mail letters from:
Patricia Shenk, Oakland, CA dated January 3, 2003
Gavin Robles, Covina, CA dated January 8, 2003
Jon Fell, Santa Cruz, CA dated January 15, 2003
Joshua McQueen, Los Angeles, CA dated January 28, 2003
Barbara Cooksey, Aptos, CA dated February 11, 2003
Barney McComas, San Diego, CA dated February 13, 2003

These individuals support closure of the spot prawn fishery because of the bycatch taken while targeting spot prawns and habitat damage from the trawl nets used in the fishery. They believe the Commission should follow the lead of Washington, Oregon, Alaska, and British Columbia and convert the spot prawn trawl fishery to a trap fishery.

Department Response: The Department's proposal included Option (4), a prohibition on trawl gear and a conversion to traps. The other Pacific coast states have converted to trap only fisheries for spot prawn, although Oregon's conversion program will not be completed until the end of this year.

Karen Dupuy, Ventura Fish Company
Letter dated February 14, 2003

Ms. Dupuy stated that the closure of the spot prawn trawl fishery will put her and her husband out of business. They are too old to start over in business, and she believes that this is a political issue not a resource issue. She enclosed a copy of her husband's letter discussed below.

Pete Dupuy, Ventura Fish Company
Letter dated January 26, 2003

Mr. Dupuy believes that the core of the issue is whether spot prawn trawling is hurting the biomass of the spot prawn resource. No one has proven that the spot prawn biomass is being hurt by the spot prawn trawl fishery. He also believes that the proposed closure of this fishery is because of the political power of other user groups and environmentalists. He suggests that the Commission consider 1) putting an immediate moratorium on the issuance of new prawn trawl permits; 2) splitting the ridgeback shrimp and spot prawn permit into two separate permits; 3) revisiting the control date for the spot prawn fisheries; 4) "grandfathering" the trawl fisheries with no transfer of permits; 5) directing the Department to work with the Spot Prawn Ad-Hoc Committee to come up with a limited entry program for spot prawn trawling; 6) creating a committee to deal with bycatch issues by combining the Ad-Hoc Committee with a Bycatch Committee; 7) using National Marine Fisheries Service (NMFS) observer programs; 8) conforming with the Federal small foot rope regulations; 9) asking the Pacific Fishery Management Council (Council) for a rockfish quota which would eliminate the bycatch problem and allow the more valuable spot prawn to be harvested in trawl nets and sold along with the incidentally taken rockfish; and 10) requesting an exemption from the Council for the spot prawn trawl fishery (using excluders) like the one given to the northern pink shrimp trawl fishery.

Department Response: Item 1, the moratorium on the issuance of new spot prawn trawl permits, and Item 8, the small foot rope or roller gear requirement, are options in this rulemaking package. However, none of the other items that Mr. Dupuy suggested are considered in this package. There are data and information to support that this regulatory issue directly relates to the bycatch of overfished rockfish in the spot prawn trawl fishery and is not merely a political issue. The health or biomass of the spot prawn resource is not in jeopardy, and the Department disagrees that it is relevant to the option dealing with a prohibition on the use of trawl nets to take spot prawn.

Rodney McInnis, Acting Regional Manager, National Oceanic and Atmospheric Administration (NOAA) Fisheries, Southwest Region, Long Beach
Letter dated January 17, 2003

The Pacific Fishery Management Council and NOAA Fisheries have agreed that California's optimum yield of bocaccio should be well below 20 metric tons in 2003 to promote rebuilding of the stock. The Council has been advised that the spot prawn trawl fishery historically has had significant catch of bocaccio. Federal regulations have already created a trawl rockfish conservation area. To ensure full protection of bocaccio, Dr. McInnis urged the Commission to eliminate the trawl fishery for spot prawn. If the Commission fails to take this action, the Council and NOAA Fisheries will have to consider additional constraints on the state's groundfish fisheries to offset the expected bycatch in the spot prawn trawl fishery.

Joe Blum, NOAA Fisheries
Testimony at February 6, 2003 Commission Meeting

Mr. Blum referred to his agency's letter of January 17, 2003 and urged the Commission to close the spot prawn trawl fishery.

Joe Blum, NOAA Fisheries
Testimony at February 18, 2003 Commission Meeting

Mr. Blum referred to his agency's letter of January 17, 2003 and urged the Commission to close the spot prawn trawl fishery. He commented that his agency is open to discussions for alternative approaches.

Department Response: The Department's proposal includes Option (3), a prohibition on the use of trawl nets to take spot prawn. The Department recommended that the Commission adopt Option (3) to end the bycatch of bocaccio and other overfished rockfish in the spot prawn trawl fishery.

Karen Garrison, Natural Resources Defense Council (NRDC); Cristina Mormorunni, APEX; Karen Reyna, The Ocean Conservancy; Tim Eichenberg, Oceana; and Kim Delfino, California Program Director of Defenders of Wildlife
Letter dated February 6, 2003

All the organizations listed signed a letter supporting the Commission's adoption of Option (3), a permanent closure of the spot prawn trawl fishery. Although all the agencies support a trap conversion program, they could not support Option (4), a trap conversion coupled with a trawl prohibition in the current rulemaking package because it lacked complete criteria for a conversion program.

They also made comments about testimony on the spot prawn trawl fishery at the Commission's December 20, 2002.

Department Response: Option (3) was also the Department's preferred option. The Department recommended against Option (4) as outlined in the regulatory package because circumstances had changed and it was incomplete. The December 20, 2002 testimony addressed a previous rulemaking package on the spot prawn trawl fishery so the Department has no response to those comments.

Karen Garrison, NRDC; Cristina Mormorunni, APEX; Karen Reyna, The Ocean Conservancy; Tim Eichenberg, Oceana; and Kim Delfino, California Program Director of Defenders of Wildlife
Letter dated February 13, 2003

Again, all the parties signing the letter support the permanent closure of the spot prawn trawl fishery [Option (3)] with a carefully crafted conversion to a trap fishery at a later date. In this letter the group addresses the observer plan submitted by Mr. Ilson New for the spot prawn trawl fishermen. They believe the plan would just prolong the trawl fishery without controlling the bycatch in the fishery. They also believe that only 100 percent coverage of the vessels participating in the program is acceptable, and that is not what the plan proposes. They believe the independent consultants running the proposed program should not be controlling the data and its peer review since they are being contracted by the regulated fishermen. The request for a refund of fees from the Department is punitive and irresponsible. Sufficient information from previous trawl studies exists to corroborate the results of the Department's recent observer study.

Department Response: Option (3) was also the Department's preferred option. The Department recommended against Option (4), a trawl to trap conversion as outlined in the regulatory package because circumstances had changed and it was incomplete. Neither the Commission nor the Department have the authority to authorize a refund of funds that were already spent on the Department's bycatch observer program. An independent observer program to document the quantity and identity of bycatch does not address the immediate need for an elimination of bycatch of overfished rockfish species. Although the quantities of bycatch would differ, the proposed study would likely only verify what the Department's bycatch program and previous studies have already documented: the take of bycatch which includes overfished rockfish.

Karen Reyna, representing The Ocean Conservancy, APEX, Defenders of Wildlife, NRDC and Oceana
Testimony at February 18, 2003 Commission meeting

Ms. Reyna referred to the letter dated February 13, 2003, signed by all the environmental groups named, supporting a total ban on trawling. She also clarified that the proposed legislation, Senate Bill (SB) 326, is not a total ban on trawling but a standardization of how trawling is conducted.

Department Response: See the response above to their February 13, 2003 letter. The Department has no comment on the introduction of SB 326 as it is not the subject of the current regulatory package of options on spot prawn trawling.

Ilson New, Attorney for California Spot Prawn Trawlers Association
Letter and Bycatch Observer Plan dated February 3, 2003

The letter highlighted details in the proposed observer plan. A refund of the observer fees collected from the trawl fishermen by the Department for their observer program was also requested. The plan outlined six phases of an at-sea observer program that would be conducted by non-Department biologists over a

three to twelve year period on selected spot prawn trawl vessels actively participating in the fishery. The phases are: 1) construction of a statistical study; 2) first year field effort; 3) data entry and analysis; 4) preparation of draft report and distribution to the Department for peer review of the report; 5) conference with the Department, if there is disagreement about the draft report, and preparation of the final report; and 6) subsequent years' surveys and reports.

Department Response: The Department's proposal included Option (2), a requirement that all spot prawn trawl vessels participate in a contract observer program. Neither the Commission nor the Department has the authority to authorize a refund of fees that were already spent on the Department's bycatch observer program. An independent observer program to document the quantity and identity of bycatch does not address the immediate need for an elimination of the bycatch of overfished rockfish species. The observer coverage in the suggested plan was not a major improvement from what was done in the Department's study.

Ilson New, Attorney for California Spot Prawn Trawlers Association
Testimony at February 6, 2003 Commission Meeting

Mr. New summarized the proposed observer plan utilizing 11 of the 22 active spot prawn trawl vessels in the fleet. The plan would be based on observer coverage on 25 trips. He has Drs. Rich and Rice lined up to design the sampling methodology if the Commission wants him to proceed. The California Spot Prawn Trawlers Association would sponsor the program, but Mr. New requested a refund of the \$17,000 in fees paid by the trawlers for what he believes is a flawed study by the Department. Mr. New also questioned the validity of the information on the six-month shortened spot prawn trawl season about which he received notice from the Commission. He was present at the December 20, 2002 meeting and did not recall such an action.

Department Response: See the response above to Mr. New's letter and plan. The action taken at the December 20, 2002 meeting by the Commission reduced the nine-month spot prawn trawl season to a six-month season resuming on March 1 instead of February 1, 2003. Sufficient information from previous trawl studies exists to corroborate the results of the Department's observer study. Despite the program's limitations, which were documented in the report, the Department does not believe its study and report are flawed in a manner that would make the results unreliable.

Sandy Winston, Commercial Spot Prawn Trawl Fisherman
Testimony at February 6, 2003 Commission Meeting

Mr. Winston stated that he has fished for 27 years and he does not believe there is a problem with bocaccio. He also expressed his and other fishermen's

frustration on spending a considerable amount of time and money to have two experts at the Commission's December 5-6, 2002 meeting who were never heard.

Department Response: The Pacific Fishery Management Council and NOAA Fisheries have compiled overwhelming data showing that bocaccio and several other species of rockfish have suffered catastrophic declines in the last several decades and are now severely overfished. At their December 20, 2002 meeting, the Commissioners expressed their belief that the written version of the PowerPoint presentation these experts were going to make at the December 5-6 meeting (where a quorum of Commissioners was not present), and of which the Commissioners received copies, was adequate.

Gordon Fox, Fox Fisheries, Commercial Spot Prawn Trawl Fisherman
Testimony at February 6, 2003 Commission Meeting

Mr. Fox commented on the eight options being considered in the current regulatory package. He supported a moratorium on new permits; a mandatory observer program; a minimum depth restriction outside 150 fathoms or 250 fathoms with large footrope; trawling inside the California Rockfish Conservation Area (CRCA) with a small foot rope (maximum 8 inches) and a hard grate excluder; and a vessel monitoring system. He also said that reading the Federal register it sounded like the Pacific Fishery Management Council (Council) had already made the decision about closing California's spot prawn trawl fishery.

Department Response: All the options Mr. Fox commented on were contained in the current regulatory package. The Council developed the CRCA regulations and California's incidental take projections for bocaccio based on the assumption that the Department would request that the Commission close the spot prawn trawl fishery. However, the Federal government cannot ban a state-managed fishery.

Karen Garrison, NRDC
Testimony at February 6, 2003 Commission Meeting

Ms. Garrison supported a closure of the spot prawn trawl fishery. She opposed the proposed observer plan due to the high risks to other fisheries and the environment. She also noted the severe decline in bocaccio related to their historic numbers.

Karen Reyna, The Ocean Conservancy
Testimony at February 6, 2003 Commission Meeting

Ms. Reyna supported Ms. Garrison's comments. She also commented that Nordmore grates were effective at reducing canary rockfish bycatch in the pink

shrimp fishery in Oregon, but no data exist on how effective the grate would be in a fishery that targets a much larger shrimp (spot prawn) and encounters small rockfish. She supported a conversion program from trawls to traps.

Tim Eichenberg, Oceania
Testimony at February 6, 2003 Commission Meeting

Mr. Eichenberg supported the comments made by Reyna and Garrison.

Department Response: Option (3), a prohibition on the use of trawl nets for the take of spot prawn, was also the Department's preferred option. The Department recommended against Option (4), a trawl to trap conversion as outlined in the current regulatory package, because circumstances had changed and it was incomplete. The Department is in agreement with other information presented by these speakers.

Zeke Grader, PCFFA
Testimony at February 6, 2003 Commission Meeting

Mr. Grader's organization represents a small number of trawlers in the Santa Barbara area. He stated that traps do not work in the Santa Barbara area. He supported a conversion to traps in other areas besides the Santa Barbara area. He urged the Commission to be flexible enough to allow the trawl vessels to resume operation if new data on bocaccio improve the status of the stock.

Department Response: The current regulatory package does not contain an option that would exclude the Santa Barbara area from a statewide prohibition on the use of trawl nets for the take of spot prawn. The Department recommended against Option (4), a trawl to trap conversion as outlined in the current regulatory package, because circumstances had changed and it was incomplete. The Commission has the authority to change regulations that control the type of gear used in the spot prawn fishery in the future.

Mike McCorkle, Commercial Fisherman
Testimony at February 6, 2003 Commission Meeting

Mr. McCorkle explained why spot prawn trapping will not work in the Santa Barbara Channel. He gave two reasons: 1) the bottom is soft mud and the traps fill up with mud; and 2) hagfish, which prey on other marine life, would fill the traps and attack anything that got in them.

Department Response: The current regulatory package does not contain an option that would exclude the Santa Barbara area from a statewide prohibition on the use of trawl nets for the take of spot prawn.

Tom Raftican, United Anglers
Testimony at February 6, 2003 Commission Meeting

Mr. Raftican provided a slide presentation on bottom trawling and stated that trawling destroys bottom habitat and has high levels of bycatch, and the fisheries are not sustainable. He supported a total prohibition on all bottom trawling in California.

Department Response: The current regulatory package only contains a prohibition on the use of bottom trawl nets for the take of spot prawn. The Department's bycatch study did reveal a significant take of overfished rockfish. However, no observations were made on the bottom habitat where the spot prawn trawling took place, and there are no data to suggest that the spot prawn trawl fishery is not sustainable.

Bob Strickland, United Anglers of Southern California
Testimony at February 6, 2003 Commission Meeting

Mr. Strickland agreed with the comments made by Mr. Raftican. He also was concerned that the continued bycatch of bocaccio in the spot prawn trawl fishery could prevent the recreational harvest of rockfish from taking place this year because the sport season does not open until July 1.

Department Response: See the response above to Mr. Raftican's testimony. Based on the information provided by NOAA Fisheries, the sport season for rockfish could be curtailed or eliminated this year if the spot prawn trawl fishery was not eliminated.

Bob Osborn, United Anglers
Testimony at February 6, 2003 Commission Meeting

Mr. Osborn commented on the bocaccio stock data.

Department Response: The Pacific Fishery Management Council and NOAA Fisheries have compiled overwhelming data showing that bocaccio and several other species of rockfish have suffered catastrophic declines in the last several decades and are now severely overfished.

A.A. Rich and Associates, Contracted by the law firm of Ilson New
Letter dated February 17, 2003

Dr. Rich's letter addresses the accuracy of the information contained in Table 11 from the Department's *Results of California Department of Fish and Game Spot Prawn Trawl and Trap Fisheries Bycatch Observer Program 2000-2001*. This table lists the number of bocaccio taken in observed trawl tows in northern and

southern California. Dr. Rich's conclusion is that some of the numbers are actual fish and some of the numbers are estimates. He studied the raw data sheets and determined there were 27 observed bocaccio and the rest of the 249 total was an estimate.

Department Response: The sampling procedure used to estimate the total weights and numbers of fishes by species in observed spot prawn trawl tows is explained on page 3 of the Department's report. The total estimated number of bocaccio in Table 11 is 249, the best estimate of the total number of bocaccio in the observed tows in which 45 bocaccio were observed.

Ilson New, Attorney for California Spot Prawn Trawlers Association
Testimony at February 18, 2003 Commission Meeting

Mr. New highlighted the comments he made in his previous letters dated December 19, 2002, and February 3, 2003. He stated that the Department's bycatch observer report is flawed and defective, and since it is the only basis for the trawl fishery closure, a decision to close that fishery would be flawed.

Department Response: The December 19, 2002 letter addressed a previous rulemaking package on the spot prawn trawl fishery so the Department has no response to those comments. See the response under Ilson New, Attorney for California Spot Prawn Trawlers Association, letter and plan dated February 3, 2003. The Department acknowledged the weaknesses of its bycatch observer program in the report. Since the results of its study are corroborated by previous trawl bycatch studies, the Department contends that the recent report was not the only basis for a recommendation to close the trawl fishery. Mr. New disputes the number of bocaccio taken, not the fact that bocaccio are taken as bycatch in the spot prawn fishery. The Department contends that the numbers of rockfish taken by trawl vessels would differ from day-to-day and area-to-area, so that bycatch numbers will always be estimates of what is actually taken by the fishery.

Mr. Barry Broad, United Anglers of California
Testimony at February 18, 2003 Commission Meeting

Mr. Broad supported the action to close the trawl fishery and to allow the affected fishermen to enter the spot prawn trap fishery. He informed the Commission of SB 326 (Alpert), which was introduced this month and would ban all bottom trawling in California.

Department Response: The Department's proposal includes Option (3), a prohibition on the use of trawl nets to take spot prawn, and Option (4), a prohibition on the use of trawl nets and a trawl to trap conversion program. The introduction of a bill that could ban bottom trawling in general in California, in the

future if adopted, is not the subject of the current regulatory package of options on spot prawn trawling.

Mr. Joe Pennisi, Commercial Trawl Fisherman, Monterey
Testimony at February 18, 2003 Commission Meeting

Mr. Pennisi believes that fish excluders [bycatch reduction devices (BRDs)] work well and should be looked into before closing the spot prawn trawl fishery. Particularly there has been success with the Nordmore grate. His grandfather started trawling in the Monterey area in 1907 and his family has continued to trawl the same area. If trawl gear were destroying the bottom of the ocean the spot prawn trawl fishery would not continue to exist in the area.

Department's Response: The spot prawn trawl vessels that participated in the Department's bycatch observation program were already using BRDs. The Nordmore grate, a specific type of BRD, was successfully used in the Oregon pink shrimp fishery to reduce the bycatch of canary rockfish in that fishery. There are no data to suggest that this specific BRD would significantly reduce or eliminate the bycatch of bocaccio in the spot prawn fishery, especially since many of the bocaccio captured as bycatch are juvenile fish. Trawl gear could still be affecting the character of the bottom in the area in Monterey that is traditionally trawled by the Pennisi family. Spot prawns might not be affected, but other species could be damaged or eliminated by the effects of trawl gear on the bottom habitat. However, there are no data available to address this issue.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The proposed regulations are presented as a series of options which include alternatives.

(b) No Change Alternative:

If the spot prawn trawl fishery is allowed to continue without change, an unacceptable amount of depleted groundfish will be taken. In the Department's observation program these groundfish species included bocaccio, cowcod, darkblotched rockfish and hake. For bocaccio, the estimated annual bycatch of 4.6 metric tons could exceed the total optimum yield for California in 2003. Bocaccio is currently a candidate species for federal listing under the Endangered Species Act. Allowing this fishery to continue without change would undermine the federal rebuilding plans for a number of overfished species.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulatory options.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States.

Each spot prawn trawler or buyer is considered a business. Spot prawn are landed either live or dead, but the live product demands a much greater price and is the preferred method of landing. In 2000 and 2001, 39 and 43 trawl vessels, respectively, landed spot prawn in California. Of those vessels, 22 and 21, respectively, landed more than 1,000 pounds of spot prawn at an average price of \$7.00/ pound (live). The estimated ex-vessel value of the spot prawn trawl fishery was \$1.4 million in 2001. The estimated loss to the fishery participants from a September-October closure alone was \$0.4 million based on the ex-vessel value of spot prawn and seasonal trends in catch and effort. In addition to losses incurred by fishermen due to their inability to provide their product, California buyers, processors and consumers will suffer additional losses which are not easily quantified.

In recent years, a number of these vessels have also participated in other state-managed trawl fisheries for pink shrimp, California halibut, ridgeback prawn, and sea cucumber (the trawl fisheries). Although pink shrimp and sea cucumber are restricted access fisheries, the other two are open access. It is anticipated that a

number of the affected spot prawn vessels would resume participation or participate more actively in these other fisheries if a prohibition on trawling went into effect. Increased participation in the other state-managed trawl fisheries would likely have a negative impact of unknown degree on the halibut and ridgeback trawl fisheries, and to a lesser degree pink shrimp and sea cucumbers. These fisheries are already fully exploited and additional effort will cause decreased success in the remaining trawl fisheries.

A vessel is a significant liability to the owner when it is not being used to fish. There are always berthing and maintenance fees. There is no resale value on a trawl vessel that can no longer be used to fish. Therefore cashing out is not an option for a fisherman with a trawl vessel and no permit guaranteeing a place in an existing fishery.

Conversion of trawl vessels to trap vessels would have a negative effect on the existing trap fishery participants and would also result in reduced income to the fishermen converting to a new gear type. The initial investment for each trap and associated rigging could run \$35 to \$75 per trap.

As opposed to a complete prohibition on spot prawn trawl activity, a depth closure would allow the larger trawl vessels (approximately 50 feet in length or greater), the ones that usually make the largest landings, to continue to operate, although on a limited basis. Results from the bycatch observer study showed that approximately 90 percent of all observed trawl tows occurred in water less than 150 fathoms deep. Small trawl vessels can not operate beyond the depth closure because of size, power and stability limitations.

A moratorium on new permits is not expected to have negative impacts on business. However, a contract observer program would be costly for such a small fleet of vessels. Contract observers can easily cost from \$300 to \$500 a day. A portion of the fleet would not be able to operate with the additional cost of such an observer program.

The gear restrictions being proposed might result in a reduced take of spot prawn. However, fish bycatch in the net is detrimental to the prawns, so there could also be a positive effect that offsets any shrimp loss. There would be an initial investment to convert to a small footrope and/or install a hard grate excluder that would be difficult to quantify, although it is not expected to be prohibitive.

A seven, eight, nine or ten-month closed season would have a detrimental effect on trawl participants. The amount of income each trawl fisherman would lose during an additional closure is not quantifiable, but could make the fishery economically unviable for some participants, especially those with smaller vessels.

A vessel monitoring system, depending on the model selected, would range in cost between \$1700 and \$2700. This would be a one-time cost that would be amortized over time.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

See discussion under VI(a) above.

- (c) Cost Impacts on a Representative Private Person or Business:

See discussion under VI(a) above for possible cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest (Policy Statement Overview)

The spot prawn trawl fishery is open-access and is closed from November 1 through January 31 statewide. The Commission took action on December 20, 2002 to increase the closed season to six months, from September 1 through the last day in February. The Department's report, *Results of California Department of Fish and Game Spot Prawn Trawl and Trap Fisheries Observer Program 2000-2001*, estimated a total bycatch in the trawl fishery of 5 tons of bocaccio, 1.2 tons of cowcod, and 6.5 tons of darkblotched rockfish in a one-year period. This level of bycatch of these overfished rockfish species is considered unacceptable.

The Commission is considering the following regulatory options, individually or in combination, for implementation by March 1, 2003, the reopening of the spot prawn trawl season:

- a moratorium on the issuance of new spot, ridgeback, and golden prawn trawl permits (these species are combined under a single permit);
- a requirement that all spot prawn trawl vessels participate in a contract observer program;
- a prohibition on the use of trawl nets to take spot prawn;
- a prohibition on the use of trawl nets to take spot prawn with the allowance of a conversion to trap fishing, subject to certain minimum landing requirements from the trawl fishery during the 1997 to 1999 window period;
- the establishment of a minimum depth restriction for spot prawn trawling south and north of Point Reyes at 150 fathoms and 250 fathoms, respectively;
- a requirement that all spot prawn trawl vessels use small roller gear (8-inch diameter or smaller) and/or hard grate excluders in their nets;
- the establishment of a seven, eight, nine or ten-month closed season for spot prawn trawling that includes as a minimum the months of November through the end of February; and
- a requirement that all spot prawn trawl vessels be equipped with a vessel monitoring system when the federal government has an operational monitoring program.

After testimony at its February 18, 2003 telephonic meeting the Commission unanimously adopted Option (3) a prohibition on the use of trawl nets to take spot prawn. The regulatory language also included a prohibition on the take of spot prawn when trawling for pink shrimp.

(REGULATORY LANGUAGE)

Subsection (h) of Section 120 of Title 14, CCR, is amended to read:

Section 120. Prawn or Shrimp Trawling.

(h) Incidentally Caught Fish. Not more than 1,500 pounds, multiplied by the number of days of the fishing trip, of fish other than Pacific whiting, shortbelly rockfish, or arrowtooth flounder caught incidentally with shrimp or prawns may be possessed on any boat operating under a permit as provided in these regulations, except salmon may be taken and possessed subject to sections ~~8210.2~~ 8210.2 to 8226, and 8230 to 8237, inclusive, of the Fish and Game Code. Spot prawns shall not be possessed or landed as incidental catch in the pink shrimp fishery.

NOTE: Authority cited: Sections 8591 and 8842, Fish and Game Code.

Reference: Sections 1700 and 8590-8595, Fish and Game Code.

Section 120.3 of Title 14, CCR, is amended to read:

Section 120.3. Golden Prawn (*Penaeus Californiensis*), Spot Prawn (*Pandalus Platyceros*) and Ridgeback Prawn (*Eusicyonia Ingentis*) Trawling.

Prawns may only be taken by trawl nets for commercial purposes pursuant to sections 120 and 120.3 of these regulations, or by traps, pursuant to sections 180, 180.2, 180.5 and this section. Spot prawns may not be taken or possessed using trawl nets.

Permits to use or possess trawl nets for the taking of golden prawns, ~~spot prawns~~ and ridgeback prawns in ocean waters may be granted only under the following conditions:

(a) Qualifications of Permittee. The applicant must be a licensed commercial fisherman and operator of a currently registered commercial fishing vessel.

(b) Cost of Permit. See subsection 699(b) of these regulations for the fee for this permit. (NOTE: this fee shall be charged effective April 1, 1992.)

~~(c) Observer fee. All vessels landing spot prawns taken by trawl from July 14, 2000, to March 31, 2001, must show proof of payment of an observer fee which shall range from \$250 to \$1,000. The actual fee shall be based on the total amount of spot prawns landed during the period January 1 to December 31, 1998, or January 1 to December 31, 1999, whichever is higher, as follows: (1) \$250 for each trawl vessel landing less than 1,000 pounds in each year for 1998 and 1999; (2) \$500 for each trawl vessel landing from 1,000 to 9,999 pounds in 1998 or 1999; (3) \$1,000 for each trawl vessel landing 10,000 pounds or more in 1998 or 1999. All funds from this fee will be used to place department observers onboard spot prawn trap and trawl vessels to obtain information on bycatch.~~

~~(d) Permit Area. Trawling for golden, spot and ridgeback prawns shall be permitted in waters not less than 25 fathoms in depth and lying not nearer than three nautical miles distance from the nearest point of land on the mainland shore, and from all offshore islands. No trawling shall be conducted in the cowcod closure areas defined in Section 150.06, Title 14, CCR. Also, trawling shall not be conducted within District 19A which shall include a line from Malibu Point (34° 01.8' N., 118° 40.8' W) to Rocky Point (Palos Verdes Point) (33° 46.5' N., 118° 25.7' W.).~~

(1) Trawling Zones.

(A) Trawling Zone 1: Includes waters between the California-Oregon border and a line extending due west from False Cape (Lat. 40° 31' N).

(B) Trawling Zone 2: Includes those waters between a line extending due west from False Cape and a line extending due west from Lopez Point (Lat. 36° N).

(C) Trawling Zone 3: Includes those waters between a line extending due west from Lopez Point and a line extending due west from Point Arguello (Lat. 34° 35' N).

(D) Trawling Zone 4: Includes those waters between a line extending due west from Point Arguello and a line extending due west from Point Dume (Lat. 34° 0' N).

(E) Trawling Zone 5: Includes those waters lying between a line extending due west from Point Dume and the California-Mexico boundary, excluding Fish and Game Districts 19A, 19B, 20, 20A and 21.

~~(e)~~(d) Restricted Catch Period:

~~—(1) Trawling for spot prawns in all zones shall be subject to the incidental catch restrictions pursuant to subsection (h) from September 1 through February 28.~~

~~(2) Trawling for ridgeback prawns in all zones shall be subject to the incidental catch restrictions pursuant to subsection (h)~~(g) from June 1 through September 30.

~~(f)~~(e) Gear Specifications.

(1) Trawl nets with single-walled bag or cod-end: The mesh of any webbing shall not be less than 1 ½ inches in length.

(2) Trawl nets with double-walled bag or cod-end: The mesh of any webbing or liner shall not be less than 3 inches in length. The lines and cod-end shall be tied together along the rib lines.

(3) Mesh measurement. Minimum trawl mesh size requirements are met if a standard stainless steel wedge of appropriate gauge can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh in the cod-end.

~~—(4) Fish excluders. All trawl nets used to fish spot prawns must be equipped with a functional finfish excluder with a minimum surface area of thirty-six square inches unless a double-walled cod-end with a minimum mesh size of three inches is used.~~

~~(g)~~(f) Limitation of Gear.

(1) No net, the meshes of which are less than prescribed in these regulations, may be possessed on any vessel which is operating under the provisions of a golden prawn, ~~spot prawn~~ or ridgeback prawn permit.

(2) All fishing gear used under the provisions of these regulations is subject to inspection and approval by the department at any time.

(3) On request, any authorized representative of the department shall be permitted to travel on the permittee's boat to observe golden prawn, ~~spot prawn~~ or ridgeback prawn trawling operations.

~~(h)~~(g) Incidental Catch Restrictions.

(1) Not more than 1,000 pounds of any fish caught incidentally with pink shrimp, golden or ridgeback prawns may be possessed on any boat operating under a permit as provided in these regulations. Fisherman should refer to subsection 189(a), Title 14, CCR, for bycatch limits of federally-managed groundfish species. Any amount of sea cucumbers taken incidentally may be possessed if the owner or operator of the vessel possesses a permit to take sea cucumbers pursuant to Section ~~8396~~8405 of the Fish and Game Code.

(2) During the restricted catch period for ridgeback prawns, loads of fish shall not contain more than 50 pounds without restriction or 15 percent, by weight, of ridgeback prawns. For the purpose of this regulation, species of fish other than spot prawns shall not be included in the determination of the percentage of ridgeback prawns taken or possessed in any load of fish containing mixed species.

(3) ~~During the restricted catch period for spot prawns,~~ Trawl loads of fish shall not contain more than 50 pounds without restriction or 15 percent, by weight, of spot prawns. For the purpose of this regulation, species of fish other than ridgeback prawns shall not be included in the determination of the percentage of spot prawns taken or possessed in any load of fish containing mixed species.

~~(i)~~(h) Records. Pursuant to Section 190 of these regulations, each permittee shall complete and submit an accurate record of his fishing activities on a form (Shrimp/Prawn Trawl Log, DFG 120 (10/89), see Appendix A) provided by the department.

~~(j)~~(i) Conditions of Permit. The provisions of the California Fish and Game Code relating to commercial fishing, except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees, or those acting under their direction and control.

~~(k)~~(j) Revocation of Permits. All permits may be revoked and cancelled by the commission upon the breach or violation of any fish and game law or regulation or violation of the terms or conditions of this permit by the holders thereof, their agents, servants, employees or those acting under their direction and control.

NOTE: Authority cited: Sections 710.7, 711, 8591 and 8842, Fish and Game Code.
Reference: Sections 710.7, 711, 8140 and 8842, Fish and Game Code.